

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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U.S. COURT OF APPEALS
JUL 02, 2004
ATLANTA, GA

UNITED STATES OF AMERICA,

Plaintiff/Appellee,

v.

MARTIN G. CHAMBERS,

Defendant/Appellant.

USCA No. 03-16469
USDC No. 02-20669-CR UUB
(Southern District of Florida)

MOTION FOR LEAVE TO SUPPLEMENT
APPELLANT'S OPENING BRIEF UNDER

Blakely v. Washington, __ U.S. __,
2004 WL 1402697 (June 24, 2004)

COMES NOW the appellant Martin Chambers who seeks leave of this court to supplement the appellant's Opening Brief with regard to the illegality of appellant's sentence under *Blakely v. Washington*, __ U.S. __, 2004 WL 1402697 (June 24, 2004).

This motion is made upon the following grounds:

1. The Supreme Court, in *Blakely v. Washington*, *supra*, decided June 24, 2004, analyzed a sentencing scheme very similar to the United States Sentencing Guidelines. *Blakely* applied *Apprendi v. New Jersey*, 530 U.S. 466 (2000) to enhancements to a sentence, based upon facts not considered by a jury. *For the court, the critical fact was the sentence a judge may impose "solely on the basis of the facts reflected in the jury verdict or admitted by the defendant."* 2004 W.L. 1402697 (emphasis in original).

The court stated it another way:

"When a judge inflicts punishment that the jury's verdict alone does not allow, the jury has not found all the facts 'which the law makes essential to the punishment.'" *Id.*

In this case, Chambers was determined to have a final offense level 36. This included 2 points for role under U.S.S.G. §3B1.1(c); 2 points for obstruction of justice under U.S.S.G. §3C1.1; and 2 points for sophisticated laundering under §2S1.1(b)(3). At the very least, none of these findings were implicit in the jury verdict. Under *Blakely*, therefore, at least these six additional points were improperly assessed.

2. The distinction is critical to Chambers, because his sentence of 188 months can be reduced by approximately 60-90 months (5-7 1/2 years) without these additional enhancements.

3. Appellant therefore respectfully requests leave of court to supplement his Appellant's Opening Brief. In the words of Justice O'Connor, in dissent in *Blakely*:

"Every sentence imposed under such guidelines in cases currently pending on direct appeal is in jeopardy." *Id.* at 1402697 (O'Connor, J., dissenting).

4. No prior application for this relief has been made.

5. Appellant Martin Chambers is currently incarcerated in the Bureau of Prisons, serving the 188 month sentence on this case.

DATED: June 29, 2004.

Respectfully submitted,

DONALD M. RÉ
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/s/ DONALD M. É
DONALD M. RÉ
Attorney for Appellant
MARTIN CHAMBERS

(Proof of Service and Certificate of Interested Persons have been omitted.)